



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201511038

DEC 17 2014

Uniform Issue Lists: 408.03-00, 402.00-00

XXX  
XXX  
XXX

T. EP. RA. T3

Legend:

Taxpayer A = XXX

IRA X = XXX

Plan Y = XXX

Amount 1 = XXX

Amount 2 = XXX

Dear XXX:

This is in response to your request dated June 17, 2014, as supplemented by correspondence dated August 28, 2014, and November 23, 2014, in which you request waivers of the 60-day rollover requirements contained in sections 408(d)(3) and 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution from IRA X totaling Amount 1 and a distribution from Plan Y totaling Amount 2. Taxpayer A asserts that her failure to accomplish rollovers within the relevant 60-day periods prescribed by sections 402(c)(3) and 408(d)(3) of the Code was due to her financial instability during a time of employment insecurity, which was exacerbated by other stressful experiences.

Taxpayer A has represented that she decided to withdraw Amount 1 and Amount 2 in order to secure financial stability during a time of employment insecurity, and that following these distributions, she experienced numerous stressful demands upon her time, including investigations related to her former employer and medical examinations.

Taxpayer A asserted that her employment insecurity and its attendant lack of financial stability made it impractical to rollover the distributions of Amount 1 and Amount 2 during the relevant 60-day periods.

Due to the termination of her employment, Taxpayer A's income was limited to unemployment compensation and she faced expenses for COBRA premiums to extend her health insurance and for medical examinations. Taxpayer A represents that she decided to withdraw amounts from her retirement funds in order to secure financial stability for herself and her children.

After withdrawing the retirement funds, Taxpayer A had numerous stressful demands on her time, including investigations involving a prior employer, her medical examinations, educating herself about her rights and responsibilities, her job search, and her self-employment efforts. In addition, as a result of the termination of her employment, Taxpayer was unable to complete the purchase of a personal residence, experienced additional financial expenses due to repairs required for her personal residence, and also had the additional financial expense of car repairs, all of which placed further demands on her time. Taxpayer A also asserts that given her financial circumstances, had she completed the rollovers of Amount 1 and Amount 2, she may have experienced adverse health consequences and a worsening of her existing health condition due to the stress of the many financial expenses. Taxpayer A has now reached into her credit line in order to maintain financial stability.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirements contained in section 402(c)(3) and 408(d)(3) of the Code with respect to the distributions of Amount 1 and Amount 2.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or

other events beyond the reasonable control of the individual subject to such requirement.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) or 408(d)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA or from a qualified retirement plan where the individual intended to complete a rollover to another IRA or qualified plan within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability.

Taxpayer A has represented that she decided to withdraw Amount 1 and Amount 2 in order to secure financial stability during a time of employment insecurity, and that following these distributions, she experienced numerous stressful demands upon her time, including investigations related to her former employer and medical examinations. Taxpayer A asserted that her employment insecurity and its attendant lack of financial stability made it impractical to rollover the distributions of Amount 1 and Amount 2 during the relevant 60-day periods.

We find that Taxpayer A has not alleged that her failure to complete a timely rollover was due to any of the circumstances enumerated in Rev. Proc. 2003-16. Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distributions of Amount 1 from IRA X and Amount 2 from Plan Y.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXX at XXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky", with a long horizontal flourish extending to the right.

Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose